MONTANA LEGISLATIVE HISTORY

Chapter 490 1895 Code of Civil Procedure later known as 70-19-302

Bill H_____ S_____ Original bill & history ____C

H. Committee on _____			S. Committee on _____		
Hearing Date(s)	_____	____C	Hearing Date(s)	_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	_____	____C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

This is a legislative history showing the California Civil Procedure Section 5315 that the text was copied from.

THE

CODES AND STATUTES OF MONTANA.

IN FORCE JULY 1st, 1895.

INCLUDING THE

POLITICAL CODE, CIVIL CODE, CODE OF CIVIL PROCEDURE AND PENAL CODE.

REPORTED BY
D. S. WADE, F. W. COLE AND B. P. CARPENTER,
CODE COMMISSION.

AS AMENDED AND ADOPTED BY THE FOURTH LEGISLATIVE ASSEMBLY, TOGETHER WITH OTHER LAWS CONTINUED IN FORCE.

COMPILED BY D. S. WADE, COMMISSIONER.

VOL. II.

III. CODE OF CIVIL PROCEDURE.
IV. PENAL CODE.

ANNOTATED
BY
FLETCHER MADDOX.

ANACONDA, MONTANA:
STANDARD PUBLISHING CO., PRINTERS.
1895.

" 492. *Right of possession not affected by descent cast.*
" 493. *Certain disabilities excluded from time to commence actions.*
" 494. *Limitation as to placer claims.*

§ 480. The state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the state to the same, unless:

1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced, or:

2. The state, or those from whom it claims, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

NULLUM TEMPUS OCCURRIT REGI.—This maxim is in force in this country, and neither will the general government nor the state be bound by statutes of limitation unless it is expressly so provided: United States v. Hoar, 2 Mason 311; United States v. Davis, 3 McLean, 483; United States v. Williams, 5 Id. 133; Sedgw. Const. Lim. 84; Wood on Limitations, sec. 52. The statutes of the states are not binding on the rights of the United States: Matthews v. Ferrea, 45 Cal. 51; Wilkins v. McCue, 46 Id. 661; Gardiner v. Miller, 47 Id. 573. No title will accrue against the general government by prescription, adverse possession, or estoppel in pais: Doran v. C. P. R. R. Co., 24 Id. 257.

No one can acquire by adverse occupancy, as against the public, the right to obstruct a street dedicated to pulic use, and thus prevent the use of it as a highway: Hoadley v. San Francisco, 50 Cal. 265; People v. Pope, 53 Id. 437. Private individuals cannot acquire title to the tide-lands of the state by adverse possession: Farish v. Coon, 40 Id. 33.

It is a general principle that general words in a statute do not bind the sovereign: See the note to People v. Herkimer, 15 Am. Dec. 380.

§ 481. No action can be brought for or in respect to real property by any person claiming under letters patent or grants from this state, unless the same might have been commenced by the state as herein specified, in case such patent had not been issued or grant made.

Title under certificate of purchase, running of statute against: 68 Cal. 123.

§ 482. When letters patent or grants of real property issued or made by the state, are declared void by the determination of a competent court, an action for the recovery of the property so conveyed may be brought, either by the state or by any subsequent patentee or grantee of the property, his heirs or assigns, within ten years after such determination, but not after that period.

§ 483. No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the property in question, within ten years before the commencement of the action. No action for the recovery of dower can be maintained by a widow unless the action is commenced within ten years after the death of her husband.

MINING CLAIMS.—The statute of limitations does not commence to run against a mining claim until the issuance of a patent therefor: King v. Thomas, 6 Mont. 409; Mayer v. Carothers, 14 Mont. 274; Clark v. Barnard, 15 Mont. —.

PREDECESSOR.—In the matter of an adverse possession taken by a grantor subsequent to his deed, and

REVISED

OF THE

STATE OF CALIFORNIA;

IN FOUR CODES

POLITICAL, CIVIL, CIVIL PROCEDURE AND PENAL.

CODE OF CIVIL PROCEDURE.

SACRAMENTO:
D. W. GELWICKS, STATE PRINTER.
1871.

CHAPTER III. *The time of commencing actions other than for the recovery of real property.*
IV. *General provisions as to the time of commencing actions.*

CHAPTER I.

THE TIME OF COMMENCING ACTIONS IN GENERAL.

SECTION 312. Commencement of civil actions.

Commencement of civil actions.

SEC. 312. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

Statutes of 1850, p. 343.

CHAPTER II.

THE TIME OF COMMENCING ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

SECTION 315. When the people will not sue.
316. When action cannot be brought by grantee from the state.
317. When actions by the people or their grantees are to be brought within five years.
318. Seizin within five years, when necessary in action for real property.
319. Such seizin, when necessary in action or defence arising out of title to or rents of real property.
320. Seizin within two years necessary in actions for mining claims.
321. Such seizin, when necessary in action or defence arising out of title to or rents of mining claims.
322. Entry on real estate.
323. Possession, when presumed. Occupation deemed under legal title, unless adverse.
324. Occupation under written instrument or judgment, when deemed adverse.
325. What constitutes adverse possession under written instrument or judgment.
326. Premises actually occupied under claim of title deemed to be held adversely.
327. What constitutes adverse possession under claim of title not written.

SECTION 328. Relation of landlord and tenant as affecting adverse possession.
329. Right of possession not affected by descent cast.
330. Certain disabilities excluded from time to commence actions.

When the people will not sue.

SEC. 315. The people of this state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless—

1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,

2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

Statutes of 1850, p. 343.

When action cannot be brought by grantee from the state.

SEC. 316. No action can be brought for or in respect to real property by any person claiming under letters patent or grants from this state, unless the same might have been commenced by the people as herein specified, in case such patent had not been issued or grant made.

Statutes of 1850, p. 343.

When actions by the people or their grantees are to be brought within five years.

SEC. 317. When letters patent or grants of real property, issued or made by the people of this state, are declared void by the determination of a competent court, rendered upon an allegation of a fraudulent suggestion, or concealment, or forfeiture, or mistake, or ignorance of a material fact, or wrongful detaining, or defective title, in such case an action for the recovery of the property so conveyed may be brought either by the people of this state, or by any subsequent patentee or grantee of the same property, his heirs or assigns, within five years after such determination, but not after that period.

Statutes of 1850, p. 343.

Seizin within five years, when necessary in action for real property.

SEC. 318. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the property in question, within five years before the commencement of the action.

Statutes of 1863, p. 325.